IN SENATE OF THE UNITED STATES,

MARCH 1, 1826.

MR. BENTON, from the Select Committee, to whom was referred the proposition to amend the Constitution of the United States, with respect to the appointment of Senators and Representatives to offices under the Federal Government,

REPORTED:

That, having had recourse to the history of the times in which the Constitution was formed, the Committee find that the proposition now referred to them, had engaged the deliberations of the Federal Convention which framed the Constitution, and of several of the State Conventions which ratified it.

In an early stage of the session of the Federal Convention, it was resolved, as follows:

"Article 6, section 9. The members of each House (of Congress) shall be ineligible to, and incapable of, holding any office under the authority of the United States, during the time for which they shall respectively be elected; and the members of the Senate shall be ineligible to, and incapable of, holding any such office for one year afterwards."—(*Journal of the Federal Convention, page* 219.)

It further appears from the journal, that this clause, in the first draft of the Constitution, was adopted with great unanimity, and that afterwards, in the concluding days of the session, it was altered, and its intention defeated, by a majority of a single vote, in the absence of one of the States by which it had been supported.

Following the Constitution into the State Conventions which ratified it, and the Committee find, that, by the New York Convention, it was recommended, as follows:

"That no Senator or Representative shall, during the time for which he was elected, be appointed to any office under the authority of the United States."

By the Virginia Convention, as follows:

"That the members of the Senate and House of Representatives shall be ineligible to, and incapable of, holding any civil office under the authority of the United States, during the term for which they shall respectively be elected."

By the North Carolina Convention, the same amendment was recommended, in the same words.

In the first session of the first Congress, which was held under the Constitution, a member of the House of Representatives submitted a similar proposition of amendment; and, in the third session of the eleventh Congress, James Madison being President, a like proposition was again submitted, and being referred to a Committee of the House, was reported by them in the following words:

"No Senator or Representative shall be appointed to any civil office, place, or emolument, under the authority of the United States, until the expiration of the Presidential term in which such person shall have served as a Senator or Representative."

Upon the question to adopt this resolution, the vote stood 71 yeas, 40 nays, wanting but three votes of the constitutional number for referring it to the decision of the States.

Having thus shewn, by a reference to the venerable evidence of our early history, that the principle of the amendment now under consideration, has had the support and approbation of the first friends of the Constitution, the Committee will now declare their own opinion in favor of its correctness, and expresses its belief that the ruling principle in the organization of the Federal Government demands its adoption.

That ruling principle requires that the three great branches of the Federal Government, the Executive, Legislative, and Judiciary, should be separate and distinct from each other, not only in contemplation of law, but in point of fact; and, for this end, that each should not only have its independent organization, but that the individuals administering each, should be wholly free from the control and influence of the individuals who administered the others.

To secure this independence on the part of the President, and to prevent the legislative department from starving him into a compliance with their will, by withholding his necessary support, or seducing him into an acquiescence in their views, by tempting his avarice with an augmented salary, (*Fed. No.* 77,) it is provided in the constitution that he shall receive a *fixed* compensation for his services, which shall neither be *increased* nor *diminished* during the term for which he was elected.

To secure the independence of the Legislative Department, and to prevent the Executive from influencing its deliberations, by retaining a set of dependants in the Senate and House of Representatives, always ready, like the placemen in the British Parliament, to support the measures of administration, it was provided, in the same constitution, that persons holding offices under the authority of the United States, should be wholly excluded from the floor of Congress.

The Committee believe that this provision for the independence of the Senate and House of Representatives, though wise and proper as far as it goes, does not go far enough to accomplish the object it had in view. They admit that the presence of office holders in the legislative department would be the bane of honest and independent legislation; and they believe that the presence of office hunters would be equally fatal. The danger to be apprehended from each, is, in ef-

fect, the same. The office holder would support the measures of administration for the purpose of saving the office which he had in possession; the office hunter would support the same measures, for the purpose of securing the office which he had in expectation. By either party, the interest of the country would be sacrificed to the views of the Executive; and the appropriate means for preventing this mischief, was, first, to exclude office holders from seats in Congress, and this the constitution has done; and, secondly, to prevent Senators and Representatives from taking appointments from the President under whose administration they had served; and this it has omitted to do. The omission was too material to escape the observation of those who were not blind to the defects of the constitution; and their animadversions were too loud and vehement to pass unnoticed by the great advocates for the ratification of that instrument. The authors of the Federalist, in their *No.* 55, felt it to be their duty to meet the objection which grew out of this omission. But even these great men, with their superior abilities, and ardent zeal in the best of causes, could attempt no more than to diminish the quantum of a danger which could not be denied to exist, and to cover, with a brilliant declamation, a part of their beloved constitution which could not be defended. They said:

"Sometimes we are told, that this fund of corruption, (Executive appointments,) is to be exhaused by the President in subduing the virtue of the Senate. Now, the fidelity of the other House is to be the victim. The improbability of such a mercenary and perfidious combination of the several members of the Government, standing on as different foundations as republican principles will well admit, and at the same time accountable to the society over which they are placed, ought alone to quiet this apprehension. But, fortunately, the constitution has provided a still further safeguard. The members of the Congress are rendered ineligible to any civil offices that may be created, or of which the emoluments may be increased, during the term of their election. No offices, therefore, can be dealt out to the existing members but such as may become vacant by ordinary casualties; and to suppose that these would be sufficient to purchase the guardians of the people, selected by the people themselves, is to renounce every rule by which events ought to be calculated, and to substitute an indiscriminate and unbounded jealousy, with which all reasoning must be vain."

The Committee believe that this answer, though specious and confident, was insufficient at the time it was given, and that subsequent events have entirely invalidated it. It was insufficient, because it turned upon the false position that one office could only influence one member, whereas, in the opinion of the Committee, it might influence many; for the danger to be apprehended from this source, lies in the *pursuit*, and not in the *enjoyment* of the office, and many members might be pursuing the same one, at the same time, and all upon the same principle, of devotion to the will of the President and neglect of the interests of their constituents. But whether good or bad

at the time it was given, there can be no question about its insufficiency at the present time. The *fact* upon which it rested has ceased to exist. It is no longer true that the President, in dealing out offices to members of Congress, will be limited, as supposed in the Federalist, to the inconsiderable number of places which may become vacant by the ordinary casualties of deaths and resignations; on the contrary, he may now draw, for that purpose, upon the entire fund of the Executive patronage. Construction and legislation have accomplished this change. In the very first year of the constitution, a construction was put upon that instrument which enabled the President to create as many vacancies as he pleased, and at any moment that he thought proper. This was effected by yielding to him the kingly prerogative of dismissing officers without the formality of a trial. The authors of the Federalist had not foreseen this construction; so far from it, they had asserted the contrary, and, arguing logically from the premises, "*that the dismissing power was appurtenant to the appointing power*," they had maintained, in *No. 77* of that standard work, that, as the consent of the Senate was necessary to the appointment of an officer, so the consent of the same body would be equally necessary to his dismission from office. But this construction was overruled by the first Congress which was formed under the constitution; the power of dismission from office was abandoned to the President alone, and, with the acquisition of this prerogative, the power and patronage of the Presidential office was instantly increased to an indefinite extent, and the argument of the Federalist against the capacity of the President to corrupt the members of Congress, founded upon the small number of places which he could use for that purpose, was totally overthrown. So much for construction. Now for the effects of legislation; and without going into an enumeration of statutes which unnecessarily increase the Executive patronage, the four years' appointment law will alone be mentioned; for, this single act, by vacating almost the entire civil list once in every period of a Presidential term of service, places more offices at the command of the President than were known to the constitution at the time of its adoption, and is, of itself, again sufficient to overthrow the whole of the argument which was used in the Federalist. So completely is this the fact, and so entirely has that argument vanished, that no one pretends to repeat it now. A new reason is now resorted to; and an improved capacity for discharging the duties of these offices, which a service in Congress is supposed to confer, is the argument now relied upon. But the committee do not yield to this argument the force which is claimed for it. They believe that it ought to be received with great qualification, and limited in its application to a small number of offices of the highest grade, and to such members of either house as actually apply themselves to the discharge of their public duties. The places which impart the faculty of giving counsel to the President, as the Departments of State, Treasury, War and Navy, and those which impose the obligation of treating with foreign powers, as embassies, may be offices of this description; but as for the great mass of places which compose the bulk of

Executive patronage, and which require no particular experience in foreign affairs, nor very enlarged knowledge of the science of government, such as those connected with the Army, the Navy, the Judiciary, the Territorial Governments, the Customs, the Land Offices, the Post Offices, the affairs of the Indians, the collection and disbursement of the public revenue, &c. &c. &c. the committee are wholly at a loss to conceive of any additional fitness or capability for discharging their duties which the most laborious service in Congress would confer. But, while they admit that heads of departments and ambassadors to foreign countries might be advantageously taken from the halls of Congress, they believe that it would be invidious to discriminate between the higher and the lower offices, and that any discrimination of this kind which could be made would still leave open the door to that sort of tampering with the independence of members which the purity of the government, and the ruling principle of the constitution, require to be closed up for ever. The only discrimination which occurs to the Committee as proper to be made, is the one which has been indicated in most of the propositions to amend the Constitution in this particular, and which contains, in itself, an obvious and essential difference in the nature of the offices, and in the facility of using them for corrupt purposes. This distinction is found in the difference between *civil* and *military* appointments; to the latter of which it is deemed inexpedient to extend the ineligibility of Senators and Representatives, as well on account of the high nature of the service to be performed, as because the occasions for such appointments, (being confined to a state of war,) will rarely occur; and when they do, will be attended with a degree of danger, toil, and privation, which will deprive them of all attraction for that description of politicians, who could be capable of bartering their official independence for the mercenary emoluments and the gilded trappings of office.

But, besides the danger to the independence of Congress, which the Committee apprehend from the continued eligibility of Senators and Representatives, to Executive appointments, another evil, equally at war with the intention of the Constitution, and with the rights of the People, may spring from the same source. It was the intention of the Constitution, that Senators and Representatives should be periodically returned, as private citizens, to the mass of their constituents, to have their official conduct reviewed by them, and to receive, at their hands, the approbation or the censure which that conduct might deserve. This return to the people, and accountability to them, constitutes the *responsibility* of the Representative, and affords the only check and control over his conduct, which the constituent can possess. The value of this responsibility was particularly relied upon, and enforced, by the authors of the Federalist, (*No. 57;*) but, if the President may prevent this return of the Senators and Representatives to their constituents: if, more than that, he may take them from their seats, and place them in other offices, far removed from the reach of the People, then the responsibility which the Constitution intended to establish, is not only destroyed, but an unfaithful member, who has

sacrificed the rights of the People to the will of the Executive, may be elevated to new honors, enriched with great emoluments, and placed in a condition to defy the resentment of those to whom the Constitution intended to make him accountable.

Considering all which, the Committee have come to the unanimous resolution to submit to the Senate a proposition of amendment to the Constitution of the United States, embracing the principle of this report:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following amendment to the Constitution of the United States, be proposed to the Legislatures of the several States; which, when ratified by three-fourths of said Legislatures, shall be valid, to all intents and purposes, as part of said Constitution:

No Senator or Representative shall be appointed to any civil office, place, or emolument, under the authority of the United States, until the expiration of the Presidential term in which such person shall have served as a Senator or Representative.